(110)

No. 88-1400

In The

Supreme Court of the United States

October Term, 1988

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA; LEONARD WILSON, Individually and as District Manager, Chicago Office of the Franchise Tax Board of the State of California; and B.M. RARANG, Individually and as Auditor, Chicago Office of the Franchise Tax Board of the State of California,

Petitioners,

v.

ALCAN ALUMINIUM LIMITED and
IMPERIAL CHEMICAL INDUSTRIES PLC,

Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS BY THE STATE OF IDAHO AND SEVERAL OTHER STATES

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QUESTIONS PRESENTED

1. Whether a foreign company which is the sole stockholder of an American subsidiary has standing to challenge in federal court the accounting method by which the State of California determines the locally taxable income of that subsidiary.

2. Whether, assuming that requisite standing exists in such an instance, a federal action for injunctive and declaratory relief is nevertheless barred by the Tax Injunction Act (28 U.S.C. § 1341) or the principle of comity which underlies the Act.

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INTEREST OF AMICI CURIAE

This brief in support of California is submitted on behalf of Idaho, Alabama, Arizona, Arkansas, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming pursuant to Supreme Court Rule 36.4.

Respondents, by their lawsuits, seek to have the federal courts rule on the validity of taxes which California has assessed to respondents' wholly owned subsidiaries, which are California taxpayers. ICI Americas, hereinafter Americas, is a wholly owned third tier subsidiary of Imperial and was a California taxpayer for the years 1972 through 1981 (JA 41, ¶6). Alcan Aluminum Corporation, hereinafter Alcancorp, is a third tier wholly-owned subsidiary of Alcan (JA 65, ¶7) and along with several other wholly-owned entities was a California taxpayer during the years 1965 through 1978 (JA 65, ¶7). Collectively, Americas and Alcancorp are hereinafter referred to as the taxpayer/subsidiaries. The nature of California's tax is irrelevant to amici and is irrelevant to the questions presented by this case to the Court.[1] What is relevant are

[1] The issue respondents seek to adjudicate involves California's application of the unitary business principle. How California applies the unitary business principle has little relevance to most of amici, some of which do not even assert a tax on or measured by income, and some of which apply the unitary business principle using procedures which differ from California's.

the questions of who may bring an action to question the application of a state tax and in what courts that action may be brought. Amici share a common belief that the appropriate party to litigate the validity of their taxes is the taxpayer and that the appropriate forums are their State courts.

If the Seventh Circuit's decision is upheld by this Court, the consequences are likely to include a multiplicity of suits brought by sole or majority shareholders; the wholesale use of federal courts to rule on state tax questions; and the need for the several states to appear and defend lawsuits outside of their individual boundaries. Such results will at least temporarily deprive the states of their lifeblood and will require the states to expend significant additional resources to collect their just due. The Seventh Circuit's decision violates the principles of comity and federalism upon which our government is based and provides a blueprint for avoiding the will of Congress in this area as expressed in the Tax Injunction Act (28 U.S.C. § 1341).

For all of the above reasons the interests of amici are direct, real and vital. The significance of these interests is underscored by the number of participating states.

STATEMENT OF FACTS

Amici adopt the Statement of the Case set forth in Petitioner's Brief on the Merits.

SUMMARY OF ARGUMENT

This case can be phrased in terms of three separate questions: standing, construction of the Tax Injunction

Act, and comity. But these three issues are so interrelated philosophically and historically that the arguments and authorities overlap. See e.g., *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981). Amici attempt to address each of the issues separately in the body of this brief, but invariably consideration and resolution of any single issue necessitates consideration of the other issues.

The basic principle underlying each of the questions presented herein is that, in the first instance, the sovereign should set the ground rules under which it will consider a challenge to the validity of the taxes it wishes to assert. This principle allows the sovereign to require that actions be brought only by taxpayers and that such actions be brought in its own courts. The federal government follows this principle with respect to its own taxes, e.g. 26 U.S.C. § 7421(a). The states follow it. Implementation of this principle within the framework of our federal system of government, which recognizes the sovereignties of the states, has led the federal government to refrain from considering initial challenges to state taxes. This Court's review of state court decisions provides necessary taxpayer safeguards, while recognizing each state's interest in being the primary adjudicator of its own tax laws. Various branches of the federal government have considered taxpayer efforts to avoid the application of this principle and have rejected them. As examples, Congress enacted the Tax Injunction Act (28 U.S.C. § 1341) to thwart abuses of diversity jurisdiction and this Court in *California v. Grace Brethren Church*, 457 U.S. 393 (1982), recognized that the Tax Injunction Act's prohibitions should cover actions for declaratory relief.

This case is yet another effort by the corporate community to contest a state tax in federal court. Once again, this effort should be rejected by the Court. Respondents'

waving of foreign flags and pleading of their separate corporate status from the taxpayers do not change the fundamental question presented. Such tactics represent nothing more than variations upon the theme, a newly dressed version of an ancient, rejected strategy to litigate state taxes in federal courts. The Court should rebuff these efforts and should, consistent with its prior holdings and the directives of Congress, reverse the Seventh Circuit's decision so these cases may properly proceed in state courts in actions brought by the taxpayers.

ARGUMENT

I. ESTABLISHED RULES ON STANDING DO NOT PERMIT A STOCKHOLDER TO CHALLENGE STATE TAXES LEVIED AGAINST THE CORPORATION

A. The Principles of Standing

The essence of the standing inquiry as articulated by this Court "is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). In particular, "The requirement of standing 'focuses on the *party* seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.' " *Valley Forge College v. Americans United*, 454 U.S. 464 at 484 (1982), quoting *Flast v. Cohen*, 392 U.S. 83 at 99 (1968). (Emphasis added.) "[S]tanding is not measured by the intensity of the litigant's interest or the fervor of his advocacy." *Valley Forge, supra* at 486. The Court has "rejected the argument that standing should be recognized because 'the adverse parties sharply conflicted in their interests and views . . .' " (*Ibid.*, n. 21, quoting

Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 166, 225 (1974).)

The question of standing has particular significance in cases involving state taxes. The sensitive nature of the relationship between the state and federal governments and the importance of tax collection to governments generally have caused the federal courts to exercise restraint when deciding cases that affect the state tax structures. *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981). Congress has also recognized the principle of noninterference and has strengthened it when the federal courts have wavered. See discussion of Tax Injunction Act, *infra*, at 13-20.

There are two components to standing, the constitutional or Article III requirements and a set of prudential principles. Each component has three major parts. Under Article III, "[A] plaintiff must [1] allege personal injury [2] fairly traceable to the defendant's allegedly unlawful conduct and [3] likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737 at 751 (1984), citing *Valley Forge College v. Americans United*, 454 U.S. 464 at 472 (1982). The prudential principles consist of " . . . [1] the general prohibition on a litigant's raising another person's legal rights, [2] the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches and [3] the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Id.*

The concepts incorporated in each of the components and their parts are not susceptible of precise definition, *Allen v. Wright, supra* at 751-52, and they obviously overlap. (For example, the Art. III requirement that a plaintiff

must allege a personal injury and the prudential prohibition on a litigant raising another person's legal rights are similar if not identical.)

> The absence of precise definitions, however, as this Court's extensive body of case law on standing illustrates, see generally Valley Forge, supra, at 471-476, 70 L Ed 2d 700, 102 S Ct 752, hardly leaves courts at sea in applying the law of standing. Like most legal notions, the standing concepts have gained considerable definition from developing case law. In many cases the standing question can be answered chiefly by comparing the allegations of the particular complaint to those made in prior standing cases. (*Id.*)

B. The Injuries Alleged Are Those of the Taxpayer/Subsidiaries, and Therefore Do Not Support Respondents' Claim to Standing

The first requirement of Article III standing is that plaintiff must allege personal injury. Prudential limitations on standing also generally preclude a party from litigating the legal rights of another. Under either test, respondents have no standing with respect to the putative administrative and financial burdens or multiple taxation because such burdens are borne directly by their subsidiaries.

The two injuries which are the gravamen of the complaints are multiple taxation (JA 9-10 ¶16, JA 20 ¶11) and administrative financial burdens. (JA 9 ¶14, JA 19-20 ¶10.)[2] To the extent these injuries exist, they clearly are

[2] Respondents have also alleged (JA 10 ¶17, JA 19 ¶9) that California's utilization of "worldwide unitary income" as a

(Continued on following page)

borne directly by the *taxpayer/subsidiaries*. It is stipulated that both the proposed assessments and all correspondence requesting information were directed to the taxpayer/subsidiaries. (JA 53 ¶27, JA 99 ¶52.) It is self-evident that any injuries are borne directly by the taxpayer/subsidiaries.

This is a case where the question of standing can be answered by reference to a rule previously developed by the courts. See *Allen v. Wright*, *id.*, quoted *supra* at 6. Respondents' injuries, to the extent they may exist, are merely the indirect result of actions taken against the corporations in which they have an interest. In such an instance, a shareholder is not entitled to bring an individual action against the alleged wrongdoer. Any injuries to the shareholder are indirect, not direct, and therefore the shareholder does not have standing. *Pittsburgh & W.Va.Ry. Co. v. United States*, 281 U.S. 479 at 487-489 (1929); *Hawes v. Oakland*, 104 U.S. 450 (1881).

Consistent application of the shareholder standing rule, and narrow construction of exceptions to the rule, have been a tradition of the federal courts. In *Hawes v. City of Oakland*, *id.*, this Court, in rejecting a shareholder's

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base for taxation imposes a tax upon the parent companies and their non-United States subsidiaries. However, "income that is included in the preapportioned tax base is not, by virtue of that inclusion, taxed by the State." *Shell Oil Company v. Iowa Department of Revenue*, 488 U.S. ___ (1988). Furthermore, it is stipulated in both cases that the only entities taxed by California are respondents' United States subsidiaries doing business in California and that no tax has been assessed by California against respondents or their non-United States subsidiaries. (JA 53 ¶27 and JA 99 ¶52.)

claim of standing, found that the claim was raised by the shareholder largely to obtain access to the federal courts in New York and to avoid the state courts of California and not because he had injury independent of the corporation. The case was dismissed despite the fact the corporation had not instituted suit itself. The court in its decision noted the existence of the potential for collusion to avoid jurisdiction of the state courts.

The parallels to the present cases seem obvious but were ignored by the Seventh Circuit. Shareholders will not ignore the Seventh Circuit's decision, however. If this Court adopts the approach of the Seventh Circuit, it is not hard to imagine that virtually all corporate state tax disputes might be litigated in federal court. For those taxpayers who do not currently have a parent corporation to maintain the action, the simple expediency of a reorganization will remedy the "defect." The question of standing is of more substance than the Seventh Circuit accords it.

C. Burdening a Parent-Company's Decision-Making is Not a Cognizable Injury for Standing Purposes

The Seventh Circuit recognizes that allegations of multiple taxation and compliance burdens relate to "injuries" sustained by the taxpayer/subsidiaries and that under traditional analysis these allegations do not establish injury to respondents sufficient to confer standing on them. (Pet. App. A-13.) The Seventh Circuit, however, says the focus of the standing inquiry cannot be limited to the relationship between parent and subsidiary but must be expanded in recognition that the subsidiary is an

instrumentality of foreign commerce. (Pet. App. A-15.)[3] Under this expansive view, a direct injury is found because respondents' decision as to how to conduct its foreign commerce was "burdened," "distorted," and "penalized." (Pet. App. A-15-16.) A particular mode of foreign participation was "disfavored." (*Id.*)

Even if the Seventh Circuit's characterizations are correct, however, it does not follow that the "burden" on decision-making is an independent, cognizable injury to respondents. To help determine whether the parent corporations are directly injured, one can look to the cause of the purported injury. Here the cause of the purported injury to the parent companies is the higher tax assessed against Alcancorp and Americas and the taxpayer/subsidiaries' cost of compliance. Respondents are injured only because their subsidiaries bear greater costs. Respondent's injuries are therefore not direct and do not create standing.

The forced nature of the Seventh Circuit's finding is revealed by further consideration of the alleged injury, a burden on a decision. It is clear that the exercise of choices, the picking of one alternative over others, necessarily contemplates the weighing of the costs and benefits of each. The fact that one choice or alternative may be

[3] Amici believe it is unlikely that the Seventh Circuit's holding would be restricted solely to foreign commerce. The reasoning of the Court of Appeal appears to apply equally to interstate commerce.

more attractive than others, however, does not cause a cognizable injury. Choosing between alternatives is what businesses do; they make business choices. Under the Seventh Circuit's analysis, however, the State must act to ensure absolute neutrality between alternatives or it has caused an injury and created a cause of action.

The Seventh Circuit correctly points out foreign companies can choose the means by which they conduct commerce in California. It posits two alternatives, through arm's-length transactions with unaffiliated entities and through subsidiaries. (Pet. App. A-15.)[4] It finds that the income *attributable to California* in the latter situation (use of subsidiaries) will be potentially higher than in the former (third party).

The fact that the costs may differ depending upon the choice does not establish injury any more than does the fact that the benefits may differ. Any cost, tax, environmental restriction, registration requirement, or labor law can "burden" the decision as to how to participate in a state. Any business faces the same choice. This does not confer standing on respondents or any shareholder, however. Once respondents determine they wish to participate in a state's economy, they are subject to the "burdens" of that participation. If they participate

[4] These are not the only alternatives. For example, respondents could participate directly in California themselves. However, analytically the results are the same because they contrast third party participation with participation by the enterprise.

directly, they may contest the "burdens" directly. If they participate through a subsidiary, it is the subsidiary to which the "burdens" apply and which must challenge the "burdens." If they choose to deal only with unrelated third parties, no "burdens" apply but benefits are foregone. This is their choice and one which they must weigh. It does not mean, however, that a state must accord them special treatment and allow them to participate in its economy free of any and all "burdens."

Corporate businesses engaging in interstate or foreign commerce are always confronted with decisions as to how to conduct that commerce. These decisions are made by weighing burdens and benefits. The Seventh Circuit's analysis will create federal court standing to challenge any state action as long as a stockholder/subsidiary relationship is created. The Seventh Circuit's decision has the potential to eliminate standing considerations for all incorporated businesses and should not be allowed to stand.

D. The Seventh Circuit's Decision Improperly Focuses On The State Tax Issue Sought to be Litigated

The Seventh Circuit states, "It is important that these injuries, which FTB would have us label as indirect . . ., have fueled a simmering trade controversy . . . " (Pet. App. A-17.) With respect to that controversy and with respect to comity the Seventh Circuit stated:

> We hold that comity and federalism, weighty as these concerns are where federal courts pass on the constitutionality of state tax legislation, cannot justify

> withholding federal jurisdiction from a party with no cause of action in state court to redress its own direct and independent injury. This is especially true where important, and apparently pressing, considerations of international comity as well as comity within our own federal system are at stake. Pet. App. at A-19.

The Seventh Circuit has focused upon the importance of the *issue* and not upon the appropriateness of the *party*. This focus is further demonstrated by its assertion that environmental or safety regulations are distinguishable because they affect foreign and domestically owned businesses equally. (Pet. App. A-14.) Environmental and safety regulations directly affect the entity they are asserted against. They affect the owner of the entity indirectly. The owner would no more have standing to complain of the effect of environmental or safety regulations regardless of their application (differential treatment for foreign and domestically owned entities) than respondents have standing to complain of taxes asserted against their subsidiaries.

The Seventh Circuit appears to take the approach that "the business of the federal courts is correcting constitutional errors, and that 'cases and controversies' are at best merely convenient vehicles for doing so and at worst nuisances that may be dispensed with when they become obstacles to that transcendent endeavor." *Valley Forge College v. Americans United*, 454 U.S. 464 at 489 (1982). The Supreme Court *rejected* this philosophical approach in the cited case.

II. THE TAX INJUNCTION ACT BARS A STOCKHOLDER SUIT WHERE THE CORPORATION ITSELF HAS AN ADEQUATE STATE REMEDY

A. Background

The federal government, in recognition of the importance of collecting its own revenues, adopted the Anti-Injunction Act, now 26 U.S.C. § 7421(a), in 1867. Virtually every State has a counterpart in its individual codes. Both the state and federal acts require the validity of taxes to be contested by specific parties and via specific limited avenues. Typically the tax may only be contested by a taxpayer through a suit for refund after payment, and in some cases in an appeal from some type of notice of deficiency. Generally, neither federal nor state governments allow the validity of their taxes to be adjudicated through an equitable proceeding seeking injunctive or declaratory relief.

States, however, can only limit the remedies which are available in their own courts. They cannot affect the remedies available in the courts of other jurisdictions. Actions brought in the courts of other jurisdictions have almost uniformly been dismissed on the principles of comity. These principles have been honored not just by the states, but they have also been recognized and followed by the federal courts. *Matthews v. Rodgers*, 284 U.S. 521 (1932); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981).

At one point, corporate taxpayers pleading diversity jurisdiction found the federal courts receptive to complaints about state taxes. In response, the Congress, in

recognition of the needs of state and local governments to have access to revenues, passed the Tax Injunction Act, now 28 U.S.C. § 1341, in 1937.

The Tax Injunction Act provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The Tax Injunction Act is effectively a complement to the Anti-Injunction Act which is necessitated by our federal system of dual sovereignty. Its language generally parallels the Anti-Injunction Act. The Tax Injunction Act specifically requires that a state must provide a "plain, speedy and efficient remedy" for the adjudication of the validity of its tax. It is uncontested that California provides such a remedy. Respondents' sole basis of complaint is that the remedy lies with their wholly owned subsidiaries rather than in their own hands.

The purpose of the bill as explained by its author, Senator Bone, was "to take away the jurisdiction of Federal District courts to enjoin, suspend or restrain the assessment or collection of any tax imposed by or pursuant to the laws of any State." 81 Cong. Rec. 1415 (1937). The need for the legislation arose from "The existing practice of the Federal courts to entertain tax-injunction suits [which] make it possible for foreign corporations to withhold from a state and its governmental subdivisions taxes in such vast amounts and for such long periods as to disrupt State and county finances . . . " *Id.* at 416.

The Senate Committee on the Judiciary described the problem as follows:

> The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy. Sen.Rep.No. 1035, 75th Cong., 1st Sess., p. 2 (1937).

Congress enacted the Tax Injunction Act in response to the corporate legal ploy of pleading diversity jurisdiction to obtain access to federal courts. As this Court has noted, "Congress worried not so much about the form of relief available in the federal courts as about divesting the federal courts of jurisdiction to interfere with state tax administration." *California v. Grace Brethren Church*, 457 U.S. 393, 409, n. 22 (1982).

The tenacity of the American taxpayer constantly threatens to drain the Nation of a life-sustaining infusion of revenues. See Gorovitz, Federal Tax Injunctions and the Standard Nut Cases, 10 Taxes 446, 446 (1932). Taxpayer tenacity applies to state taxes as well as federal taxes. In this case respondents seek to employ another classic legal strategy, use of the corporate form, to achieve the same result. Respondents' taxpayer/subsidiaries cannot bring an action in federal courts because

California provides them with a "plain, speedy and efficient remedy" as required by the Tax Injunction Act. Respondents seek to do what their taxpayer/subsidiaries cannot, sue in federal court. They argue the Tax Injunction Act does not apply to them because *they* have no remedy in California's courts. Respondents strategy must be recognized for what it is, a ploy. Some might argue an artful ploy, but nonetheless a ploy. If respondents' strategy is successful, the Court will have opened the floodgates for federal court suits by virtually every multijurisdictional business operating within the United States.

B. The Tax Injunction Act by its Terms Bars Respondents Because Here The State Provides a "Plain, Speedy and Efficient Remedy"

This Court has had occasion to review the reach of the Tax Injunction Act on several occasions, but has not had occasion to rule on the question of whether the requirements of the Tax Injunction Act are satisfied by having the right to a "plain, speedy and efficient remedy" in someone's hands other than those of the litigant. The Court, however, has had occasion to consider this question with respect to the Anti-Injunction Act. Given the close relationship between the purposes of the Anti-Injunction Act and the Tax Injunction Act and the similarity of their terms, this Court's teachings in *South Carolina v. Regan*, 465 U.S. 367 (1984), have application in this case and lead to a construction of the Tax Injunction Act barring these actions.

The Tax Injunction Act was conceived as an answer to a corporate practice of using diversity jurisdiction to avoid adjudication of the validity of a state tax in the courts of the taxing states. Justice O'Connor, in her concurring opinion in *Regan*, shows an acute awareness of the potential ingenuity of taxpayer efforts to avoid or impede the collection of taxes when she points to the possible collusive use of nontaxpaying association of taxpayers and nontaxpayer organizations to avoid the prohibition of the anti-injunction policy of the federal prohibition. *South Carolina v. Regan, supra* at 386. This case presents the very strategy Justice O'Connor warned of in only slightly different clothing. Instead of an association of taxpayers, we have the corporate shareholder of the taxpayer/subsidiary bringing the action. Instead of federal taxes we have state taxes. The names may differ, but the strategy is the same.

The majority in *Regan* responded to Justice O'Connor's concern as follows:

> Justice O'Connor suggests that our holding today will enable taxpayers to evade the Anti-Injunction Act by forming organizations to litigate their tax claims. Post, at 386, 394, 79 L Ed 2d, at 387, 392. We disagree. Because taxpayers have alternative remedies, it would elevate form over substance to treat such organizations as if they did not possess alternative remedies. Accordingly, such organizations could not successfully argue that the Act does not apply because they are without alternative remedies. *Id.* at 381, n. 19.

If an organization has an alternative remedy available to it through a taxpayer/member, then a sole shareholder surely has a remedy available to it through a

wholly-owned taxpayer/subsidiary.[5] To hold otherwise would elevate form over substance.[6]

Construction of the Tax Injunction Act to prohibit suits by shareholders to litigate the tax obligations of the underlying corporate taxpayers is consistent with congressional intent. In passing the Tax Injunction Act, Congress sought to deny an advantage to corporate taxpayers with regard to access to the federal courts. Specifically, Congress acted to prevent the place of incorporation alone from giving rise to federal jurisdiction to hear a cause of action with respect to state taxes. Construction of the Tax Injunction Act to allow a shareholder access to the federal court which the corporate taxpayer does not have will give rise to wholesale avoidance of the prohibition of the Act and frustrate clear congressional intent. The creation of a parent/subsidiary relationship should no more give rise to federal jurisdiction than should the place of incorporation. This is the only construction consistent with Congress' intent in enacting the statute. As the Court has stated, "In order to . . . be faithful to the congressional intent 'to limit drastically' federal-court interference with state tax systems, we must construe narrowly the 'plain, speedy and efficient' exception to the Tax Injunction Act." *California v. Grace Brethren Church*, 457 U.S. 393, 413 (1982).

This Court stated in *Grace Brethren*, " . . . we do not believe that Congress intended federal injunction and declaratory judgments to disrupt state tax administration when state refund procedures are available." *Id.* at 417. Disruption occurs just as readily when an action is brought by a shareholder of a taxpayer as when it is brought by the taxpayer. In either event, the Tax Injunction Act should bar federal court interference.

In *Grace Brethren* this Court construed the Tax Injunction Act to bar actions for declaratory relief even though it was not specifically mentioned in the statute. The Court stated: "[I]n enacting the Tax Injunction Act, Congress considered primarily injunctions against state officials because that form of anticipatory relief was the principal weapon used by businesses to delay or avoid paying state taxes" *Id.* at 409, n. 22. Similarly, until recently taxpayer actions were the vehicle for adjudicating the validity of state laws. Now a new strategy has arisen, shareholder suits. But just as in the case of suits for declaratory relief,

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[5] It should be noted that Counsel of Record for respondents in these cases are employees of Alcancorp and Americas, respectively.

[6] Alternatively, this Court should consider whether Justice O'Connor's literal approach to construction of the Anti-Injunction Act should be applied to the Tax Injunction Act in order to carry out the intent of Congress. While the majority in *South Carolina v. Regan, supra*, did not adopt a literal approach as to the Anti-Injunction Act regarding federal taxes, such an approach would be fully appropriate here. In order to "be faithful to the congressional intent 'to limit drastically' federal-court interference with state tax systems," this Court has recognized that it "must construe narrowly the 'plain, speedy and efficient' exception to the Tax Injunction Act." *California v. Grace Brethren Church, supra*, at 413. That exception to the Tax Injunction Act does not state that anyone other than the taxpayer must be accorded a "plain, speedy and efficient remedy." Furthermore, it is clear that California does provide such a remedy to taxpayers. See *id.*, at 413-417. Since California's remedy meets the standard set by the terms of the Tax Injunction Act, a narrow, literal construction of that standard would bar the federal courts from entertaining nontaxpayer suits which attempt to prevent collection of the California tax.

the result of allowing such suits would be the same, the circumventing of state courts. This result is inconsistent with the purpose of the Tax Injunction Act and should not be allowed by the Court.

C. Summary

If the Tax Injunction Act is construed to allow respondents to maintain this action, the consequences are obvious. *Any* state corporate tax matter can be adjudicated in the federal courts merely by establishing a parent/subsidiary relationship. The Tax Injunction Act was enacted to prevent circumvention of the state courts. The means of circumvention are irrelevant. A parent/subsidiary relationship is no more meaningful a basis of establishing jurisdiction in a state tax case than is diversity.

III. THE PRINCIPLES OF COMITY BAR THIS ACTION

In *Younger v. Harris*, 401 U.S. 37, 44-45 (1971), this Court stated:

> the notion of "comity," that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as 'Our Federalism,' and one familiar with the profound debates that ushered our

> Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of 'Our Federalism.' The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, 'Our Federalism,' born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

This Court has long recognized that the principles of comity apply with particular force in the area of federal court adjudication of the constitutionality of state taxes. *Matthews v. Rodgers*, 284 U.S. 521 (1932); *Singer Sewing Machine Co. v. Benedict*, 229 U.S. 481 (1913); *Boise Artesian Water Co. v. Boise City*, 213 U.S. 276 (1909). Partly in response to the same comity concerns expressed in federal cases and in part to further clear the federal courts, Congress enacted the Tax Injunction Act. *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981). The action of Congress, however, has not robbed the principles of comity of any of their vitality in the area of state taxation. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943); *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100 (1981).

The principles of comity support federal court abstention from resolving the issues presented by respondents because their wholly-owned subsidiaries have a full and adequate remedy in the courts of California. If our federal system of government is to continue to function properly, this Court should not allow the federal court system to be the forum for resolving all state tax issues. That surely would be the result of permitting respondents to proceed in this case, since the rationale of the Seventh Circuit would apply to companies engaged in interstate as well as foreign commerce.

CONCLUSION

In general, taxpayers are only allowed to contest their federal taxes after they have paid them. Furthermore, shareholders of a corporation are not permitted to contest federal taxes assessed against the corporation. The States follow the same rules with respect to their own taxes.

Respondents seek a different result by bringing this action to contest state taxes assessed against subsidiaries in federal courts. This action is brought in spite of the fact that the taxpayer/subsidiary can bring, and in the case of Alcancorp has brought, an action in state court and in spite of the Tax Injunction Act. Respondents' efforts should be rejected. To permit respondents to employ the artifice of separate incorporation to avoid a congressional prohibition, the principles of comity, and the doctrine of

standing is to pervert our federal system. This Court should reverse the holding of the Seventh Circuit.

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